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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/204,888	12/03/1998	CHARLES A. ELDERING	8887.3002	9427
27832	7590	01/17/2006	EXAMINER	
TECHNOLOGY, PATENTS AND LICENSING, INC./PRIME 2003 SOUTH EASTON RD SUITE 208 DOYLESTOWN ROAD, PA 18901			BUI, KIEU OANH T	
			ART UNIT	PAPER NUMBER
			2611	

DATE MAILED: 01/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/204,888

Applicant(s)

ELDERING ET AL.

Examiner

KIEU-OANH T. BUI

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 02 May 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 114-148 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 114-148 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>05/18/2005</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Terminal Disclaimer***

1. The terminal disclaimers filed on 4/11/2000 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of patent 6,457,010 and/or to any patent granted on pending application 09/205,119 has been received.

### ***Continued Examination Under 37 CFR 1.114***

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 4/28/05 has been entered.

### ***Remarks***

3. Applicant's arguments with respect to new claims 114-148 have been considered but are moot in view of the new ground(s) of rejection. Claims 1-113 were previously canceled as noted in the amendment dated 04/28/05.

***Claim Rejections - 35 USC 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

*A person shall be entitled to a patent unless --  
(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.*

5. Claims 114-148 are rejected under 35 U.S.C. 102(e) as being anticipated by Herz et al. (U.S. Patent No. 5,758,257).

Regarding claim 114, Herz discloses "in a video network, a computer-implemented method of inferring the gender of a viewer, the method comprising: (a) monitoring viewer interactions with a multimedia device to create a viewing record; (b) applying one or more heuristic rules to the viewing record, wherein the heuristic rules assign a probabilistic measure of gender based on one or more aspects of the viewing record; and (c) inferring the gender of the viewer based on the probabilistic measure", i.e., Herz uses computer algorithms to infer the gender of a viewer by calculating the initial monitored viewer's profile in generating a similarly or probabilistic measure of the gender in order to create a cluster of similarities based on the probabilistic measure (refer to Fig. 3; col. 4/lines 18-58 for the viewer profile and similarities/popularities based on the best matches to profiles; col. 8/lines 6-52 for measurement of similarity in predicting and providing an agreement matrix for his or her cluster of viewers; col. 22/lines 15-55 for heuristic methods in creating the similarity based on initial viewer

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profiles; col. 22/line 56 to col. 24/line 52 for using the similarity for computing the clustering of similar interested users; and col. 5/lines 37-52 & col. 25/lines 30-44 for an example of inferring the gender of a viewer whether Dad or Mom, an adult guest or a child uses or controls the television set, also in col. 48/lines 5-22).

As for claim 115 and 116, Herz further discloses “wherein the viewing record includes the number of channel changes made by the viewer” and “wherein the heuristic rules assign the probabilistic measure based on the number of channel changes” (Fig. 3/at step 306 whether the viewer selects or do not select a movie by channel changing/switching, the monitoring system predicts the closest match based on that selection at step 112, and changing channels monitoring is also known in the art, as disclosed in col. 2/lines 42-54).

As for claim 117, Herz further discloses “wherein step (a) includes evaluating channel change commands and associated viewing times to create the viewing record” (col. 22/lines 15-30).

As for claim 118, Herz further discloses “wherein the heuristic rules assign probabilities of a viewing record being associated with a gender group based on the viewing record” (col. 5/lines 37-52 & col. 25/lines 30-44 for an example of inferring the gender of a viewer whether Dad or Mom, an adult guest or a child uses or controls the television set; and col. 47/line 20 to col. 48/line 22 for clustering is generating for a gender group).

As for claim 119, Herz suggests “wherein said monitoring includes monitoring at least some subset of channel changes, volume changes, record commands, and time of viewer interaction” (col. 4/line 17-col. 5/line 52).

As for claim 120, Herz suggests “wherein the viewing record includes the number of channel changes made per time period” (col. 2/line 42 to col. 3/line 16 & col. 5/lines 23-52 for monitoring of channel surfing during a particular time period).

Regarding claims 121-127, these claims with similar limitations for a method inferring the gender of a viewer by monitoring channels viewed, as disclosed above for channel changing/channel surfing, are rejected for the reasons given in the scope of claims 114-120 as disclosed in details above.

Regarding claims 128-131, these claims with similar limitations for a method inferring the gender of a viewer by monitoring viewer interactions with a multimedia device as in claim 114 with channel changing/channel surfing in a time period as in claim 120, are rejected for the reasons given in the scope of claims 114-120 as disclosed in details above.

Regarding claims 132-138, these claims with similar limitations for a method inferring the income of a viewer by monitoring viewer interactions as disclosed above in claim 114, in addition, refer to col. 47/lines 36-col. 48/line 22 as income of the viewer can be collected through financial transactions on purchases provided by the viewer, are rejected for the reasons given in the scope of claims 114-120 as disclosed in details above.

As for claims 139-148, these claims with similar limitations for a method inferring the income of a viewer by monitoring viewer interactions as disclosed above in claim 114 and monitoring channels viewed as in claim 120; in addition, refer to col. 47/lines 36-col. 48/line 22 as income of the viewer can be collected through financial transactions on purchases provided by the viewer, are rejected for the reasons given in the scope of claims 114-120 as disclosed in details above.

***Conclusion***

**6. Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks  
Washington, D.C. 20231

**or faxed to:** (703) 872-9306, (for Technology Center 2600 only)

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kieu-Oanh Bui whose telephone number is (571) 272-7291. The examiner can normally be reached on Monday-Friday from 9:00 AM to 6:30 PM, with alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Grant, can be reached on (571) 272-7294.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kieu-Oanh Bui  
Primary Examiner  
Art Unit 2611